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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,538	02/25/2002	Takashi Wakutsu	219295US2RD	8278
22850	7590	01/25/2006	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			TRAN, TUAN A	
			ART UNIT	PAPER NUMBER
			2682	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/080,538

Applicant(s)

WAKUTSU ET AL.

Examiner

Tuan A. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 31-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 39-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-30 and 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Riordain (6,434,364) in view of Hansson (6,023,620).

Regarding claims 8 and 10-13, O'Riordain discloses a qualification system for testing radio communications (See fig. 1), comprising: a plurality of radio terminals 12; a representative terminal 12 having a machine type identical to a machine type of the plurality of radio terminals 12 (See figs. 1, 3 and col. 5 lines 22-30); a Radio Network Performance Manager (RNPM) 24 including a test program corresponding to a plurality of radio communication systems that can be used by the representative terminal 12, and configured to execute a qualification test on the representative terminal 12 so as inherently to determine whether or not the representative terminal 12 can be used in a desired radio communication system from the plurality of communication systems, wherein the RNPM 24 determines a control sequence (parameter control software) for controlling a radio unit of the representative terminal 12, by which the representative terminal 12 can pass the qualification test (See fig. 2 a-b, 3-5 and col. 6 line 14 to col. 8 line 38). However, O'Riordain does not mention that the RNPM is capable of notifying

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the determined control sequence (a test success message) to the plurality of radio terminals 12 via a service center and a base station. Hansson teaches a method and system (See fig. 1) comprising an update server processor 100 (service center) for downloading new version of control software (the new version of control software, of course, inherently has passed some types of testing processes) into a plurality of radio terminals 110 via a base station 120 when the new control software is available (See fig. 1 and col. 2 lines 41-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teachings of Hansson in configuring the system as disclosed by O'Riordain with the update server processor (service center) for the advantage of upgrading and/or modifying subscriber terminals to be able functioning effectively in accordance with the communication system and/or the latest services provided by the network service provider.

Claims 17-21 and 24-28 are rejected for the same reasons as set forth in claims 8 and 10-13, as apparatus.

Claims 1-5 are rejected for the same reasons as set forth in claims 8 and 10-13, as method.

Regarding claim 9, O'Riordain & Hansson disclose as cited in claim 8.

O'Riordain further discloses each of the plurality of radio terminals 12 includes: a radio unit 32 configured to convert an analog radio signal into a digital signal; a radio unit controller 30 configured to control the radio unit 32; a resource 26 configured to communicate the digital signal with the radio unit to perform a signal processing operation on the digital signal and to reset a function of the signal processing operation;

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and a resource controller 30 configured to manage the resource (See fig. 3 and col. 7 lines 41-45).

Regarding claim 14, O'Riordain & Hansson disclose as cited in claim 12. However, they do not mention that the service center notifies the test success message (software) to the plurality of radio terminals by wired communication. Since downloading software by wired communication such as via Internet is a well known technique in the art; therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the service center with a capability of wired communication for the advantage of expanding the capability of the system to various types of communication protocols.

Claims 22 and 29 are rejected for the same reasons as set forth in claim 14, as apparatus.

Claim 6 is rejected for the same reasons as set forth in claim 14, as method.

Regarding claim 15, O'Riordain & Hansson disclose as cited in claim 8. O'Riordain further discloses the RNPM 24 comprises: a memory configured to store information indicative of an arrangement of resources in the representative terminal 12 and inherently a controlling unit configured to control the RNPM 24, wherein the controlling unit performs a qualification test while the controlling unit sequentially changes both the information stored in the memory and the test program (See col. 5 lines 42-49, col. 6 lines 5-13).

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Regarding claim 16, O'Riordain & Hansson disclose as cited in claim 8.

O'Riordain further discloses the RNPM 24 performs a qualification test for all combinations of the radio communication system (See col. 6 lines 52-64).

Claims 23 and 30 are rejected for the same reasons as set forth in claim 16, as apparatus.

Claim 7 is rejected for the same reason as set forth in claim 16, as method.

Regarding claim 40, O'Riordain & Hansson disclose as cited in claim 8. Hansson further discloses the plurality of radio terminals include reconfigurable mobile terminals configured for use with software defined radio technology (See fig. 1 and col. 3 lines 19-24).

Claims 41-42 are rejected for the same reasons as set forth in claim 40, as apparatus.

Claim 39 is rejected for the same reasons as set forth in claim 40, as method.

### ***Response to Arguments***

Applicant's arguments filed 10/24/2005 have been fully considered but they are not persuasive.

The Applicant argued that O'Riordain does not disclose or suggest testing a representative terminal as claimed and the combination of O'Riordain and Hansson is a result of hindsight reconstruction in view of the present specification (See Remark, page 13-14). In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

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any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this instant case: First, O'Riordain does suggest testing a representative terminal 12 that has a machine type identical to a machine type of a plurality of radio terminals 12 of a radio communication system as claimed (See fig. 1 and col. 5 lines 22-41). Second, the only difference between the O'Riordain reference and the claim limitations is the step of notifying the determined control sequence or control software (a test success message) to the plurality of radio terminals 12 via a service center and a base station. Since Hansson cures the deficiency of O'Riordain by suggesting a method and system (See fig. 1) comprising an update server processor 100 (service center) for downloading new version of control software (the new version of control software, of course, inherently has passed some types of testing processes) into a plurality of radio terminals 110 via a base station 120 when the new control software is available (See fig. 1 and col. 2 lines 41-55); therefore, O'Riordain in view of Hansson would arrive to the claim limitations. For that reasons, the rejections are proper and stand for all the pending claims.

The Applicant questions the Examiner about the statement "the new version of control software downloaded from a service provider inherently has passed some types or testing processes" (See Remark, page 13). In order to make a new version of

software public use (downloading by users) by a service provider, the software has to be a finished product that means it has gone through certain degrees of testing to see it is a finished working product. This is a common logic.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A. Tran whose telephone number is (571) 272-7858. The examiner can normally be reached on Mon-Fri, 10:00AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on (571) 272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

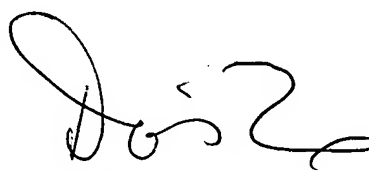


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tuan Tran



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